

## **BUILDING AND STANDARDS COMMISSION RULES AND REGULATIONS**

### **I. PURPOSE**

These rules supplement requirements and procedures set forth by state law and ordinance, and shall apply to all proceedings before the Building and Standards Commission. The Building and Standards Commission is a sovereign commission created by ordinance enacted under authority of the laws of the State of Texas.

### **II. APPEALS OF NOTICES OF VIOLATIONS**

#### **201. Notices of Violation**

##### **A. Filing by Property Owner or Owner's Agent**

If an appeal is filed by the owner of the property which is the subject of an action of the Code Official, the application must be signed by the property owner or his/her agent. If the application is signed by an agent, the agent must indicate the name of his/her principal and the agent's capacity to serve that principal. An agent must submit evidence sufficient to establish his/her authority to act on behalf of the owner.

##### **~~202~~B. Filing by Person affected by Notice of Violation**

If an appeal is brought by a person affected by a Notice of Violation other than the property owner or the owner's agent as set forth in Rule 201, the appellant shall state the nature of the injury suffered and how the appellant has been injured or damaged other than as a member of the general public. A person who holds a mortgage or deed trust, lien or record, lease of record, or any other estate or legal interest of record in the property that is the subject of the Notice of Violation shall be conclusively presumed to be a person affected by the Notice of Violation.

##### **~~203~~C. Standing--Burden of Proof**

In all appeals, the burden of proof shall be on the applicant to demonstrate standing before the Commission by clear and convincing evidence. If the Commission, on hearing the evidence regarding the applicant's standing, dismisses the appeal for lack of standing, the Commission's action shall constitute a final order disposing of the appeal.

#### **202. License and Registration Decisions, Suspensions and Revocations**

**Commented [AM1]:** TL: These will be similar to the ones in 201 but can provide language that more closely tracks the terms used for license/ registration decision/ suspension/ revocations.

### III. COMPELLING ATTENDANCE OF WITNESSES

#### 301. Subpoenas

The Chair may issue subpoenas to compel the attendance of witnesses at hearings conducted under these rules. Applications for subpoenas shall be submitted to the Commission's Coordinator not less than 72 hours prior to the scheduled hearing date.

**Commented [AM2]:** Chair – 72 hours prior to hearing date may not be practical. Vice-Chair – get feedback from legal, and possibly propose new time frame

### IV. HEARINGS AND DECISIONS

#### 401. Hearing Procedure

A. The Chair will call a case, identify all parties and witnesses who will testify of either side, and swear the parties and witnesses in.

B. The Code Official or his/her designee will be given five (5) minutes to present the City's cases. The property owner or appellant will then be given five (5) minutes to present his/her case. The Chair may extend these time limits if necessary in order to provide each party with a fair opportunity to present his or her case. Each side will be allowed (3) minutes for cross-examination.

**Commented [AM3]:** Note: Currently 5 minutes each for City & property owner to present their case/ may want to consider changing this.

C. Each party shall be given the opportunity to cross-examine all witnesses who appear to testify for the opposing side. Commission members may ask questions of each witness after the Code Official and property owner or appellant has concluded their questioning of the witness. The Chair may extend this time limit, if necessary, in order to provide each party with a fair opportunity to present his or her case.

D. After both parties have concluded their case presentations, the Chair will call on any other persons present who wish to provide relevant, non-cumulative, eyewitness testimony. All such persons shall be sworn in as witnesses prior to addressing to the Commission any comments about the property that is the subject of the hearing. Both parties ~~may~~ cross-examine all such persons, and Commission members may ask questions of all such persons.

E. The Chair may excuse any witness or other person providing testimony or wishing to provide testimony whenever it appears that the person's testimony is irrelevant, immaterial or cumulative of matters already discussed.

F. The Chair will give the property owner or appellant three (3) minutes to summarize his or her case.

**Commented [AM4]:** Chair: This doubles the time for our cases; may want look at changing this.

G. The Commission may, in its discretion, permit the Code Official to present rebuttal after the conclusion of the evidence offered by the property owner or appellant.

H. The chair will close the evidence and Commission members will reach a decision in the case. Before its final vote the Commission may in its discretion consult the parties about any objections they may have to the final form of the order to be voted upon.

**Commented [AM5]:** Chair: Currently voting not required; simpler but autocratic; Commissioners may not be ready.

**Commented [AM6]:** Chair: Do we want to allow this or not?

#### 402. Ex Parte Communications

Evidence and argument pertaining to appeals and other cases scheduled for hearings before the Commission shall be submitted only through the Commission's Coordinator, or to the Commission at a regular or special meeting of the Commission.

**Commented [AM7]:** Vice Chair: Suggested a bright line rule whereby all ex parte communications could be prohibited, regardless of whether it is related to a quasi-judicial function of the Commission, a legislative matter, or giving advice to the Council on an ordinance.

#### 403. Testimony by Parties

The Code Official and property owner or appellant shall not be required to be sworn in as witness if they themselves will not seek to testify, identify documents, or otherwise present factual information to the Commission. If during a hearing it becomes evident that a party to the hearing who was not sworn in as a witness is seeking to offer factual testimony, identify documents, or otherwise provide evidence in any way other than through the testimony of another witness present at the hearing, the Chair shall immediately stop the party and give him/her the choice of being sworn in as a witness or ceasing to offer the evidence or testimony. The Commission shall disregard unsworn statements by any party.

#### 404. Testimony by Witness

No person shall attempt to present evidence or any information whatsoever to the Commission about a property that is the subject of a hearing unless that person has been sworn in by the Chair, has come forward to the witness area designated by the Chair, and has been recognized to speak by the Chair. The Commission shall disregard unsworn statements by any person.

#### 405. Evidence--General

The rules of evidence as applied in a nonjury civil case in a district court of the State of Texas shall apply to hearing conducted under these rules, except that evidence inadmissible under those rules may be admitted if the evidence is:

1. necessary to ascertain facts not reasonably susceptible of proof under those rules'
2. not precluded by ~~statue~~statute; and
3. of a type on which a reasonably prudent person commonly relies on the conduct of the person's affairs

#### 406. Evidence Required in Certain Cases

A property owner who desires to repair a structure that has been scheduled for a demolition or would exceed a repair timeframe of 90 days shall submit to the Commission the following documents to the Code Official prior to the hearing, or the Commission at the hearing:

**Commented [AM8]:** Chair: We are not doing this and should. Rarely are documents submitted before the hearing when exceeding 90 days. Also needs to be put in writing in Notice/Order or change the rules.

1. and engineer's or architect's sealed drawings OR a contractor's estimate of required work to be accomplished.
2. a formal breakdown of costs, including supplies and labor;
3. a letter from a financial institution approving the required funds OR other proof of funding source; AND
4. an established time frame by which all work will be accomplished.

The Commission may in its discretion accept alternative forms of evidence. The Commission may in its discretion permit the Code Official to present rebuttal after the conclusion of the evidence offered by the property owner or the appellant.

**Commented [AM9]:** Commissioners discussed whether or not this covered extending the time frame beyond 90 days.

#### 407. Continuations

After conducting a hearing as set forth in Rule 401 of these Rules and Regulations, the Commission may defer taking final action whenever it concludes that additional evidence is needed or alternative solutions need further study. When deferring action after a hearing, the Commission shall clearly state the date on which the hearing will be resumed, and the issues that will be considered. If the Commission defers action in order to require additional evidence, the Commission shall give a clear statement continued under this rule shall be reopened only to consider the evidence and issues identified by the Commission.

#### 408. Decisions

All final decisions of the Commission shall be issued in the form of an Order signed by the Chair, and shall be based on findings of fact made by the Commission based on evidence and testimony introduced at a hearing. A summary of each Order that upholds any part of a recommendation or action by the Code Official shall be filed in the real property records of the county in which the property that is the subject of the Order is located. Notice of the Order to parties and other interested persons shall be as required by law.

### V. ORDERS

#### 501. Required Fact Findings

##### A. Substandard Property Cases

Before requiring the repair or vacation of a substandard property, the Commission shall find the following, along with any required supporting facts:

1. That notice of the date, time and place of the hearing was provided by certified mail, posting and publication, on or before the 10th day before the hearing date, as required by state law.

2. That the person to whom the Commission's order will be addressed is the owner ~~of~~or lienholder of the property that is the subject of the hearing.

3. That the property that is the subject of the hearing is substandard because of the existence of specific stated conditions that violate the International Property Maintenance Code as adopted and amended by the City of Austin.

#### B. Dangerous Property Cases

Before requiring the repair or vacation of a dangerous property, the Commission shall find the following, along with any required supporting facts:

1. That notice of the date, time and place of the hearing was provided by certified mail, posting and publication, on or before the 10th day before the hearing date, as required by state law.

2. That the person to whom the Commission's order will be addressed is the owner ~~of~~or lienholder of the property that is the subject of the hearing.

3. That the property that is the subject of the hearing is dangerous and a public nuisance because of the existence of specific stated conditions that violate the International Property Maintenance Code, as adopted and amended by the City of Austin.

#### C. Civil Penalty Cases

Before requiring the repair or vacation of a dangerous property, the Commission shall find the following, along with any required supporting facts:

1. That notice of the date, time and place of the hearing was provided by certified mail, posting and publication, on or before the 10th day before the hearing date, as required by state law.

2. That the person to whom the Commission's order will be addressed is the owner ~~of~~or lienholder of the property that is the subject of the hearing.

3. That the person upon whom the Commission will impose a civil penalty received actual notice of ordinance requirements relative to the property that is the subject of the hearing.

4. That after receiving actual notice of the ordinance requirements, the person upon whom the Commission will impose a civil penalty committed acts in violation of the ordinance and/or failed to take action necessary for compliance with the ordinance.

502. Time Granted to Complete Work Ordered by Commission

The Commission shall not allow a property owner ~~to~~or lienholder more than 30 days to complete work required by an order of the Commission unless the property owner or lienholder establishes at the hearing that the required work cannot reasonably be performed

**Commented [AM10]:** Chair: Look at language in C2, C3 and C4 regarding "the person" upon whom the Commission will impose a civil penalty? The penalty is imposed upon a property.

**Commented [AM11]:** Chair: Look at time frame and/or provide proper notification.

within 30 days. If the Commission allows the property owner or lienholder more than 30 days to complete required work, the Commission shall establish specific time schedules for the commencement and performance of the work and shall require the owner of lienholder to secure the property in a reasonable manner from unauthorized entry while the work is being performed.

In that event that the Commission grants the property owner or lienholder more than 90 days to complete the required work, the Commission shall not grant such extension unless the property owner or lienholder submits, at the hearing, a detailed plan and time schedule for the work and establishes at the hearing that the work cannot reasonably be completed with 90 days because of the scope and complexity of the work. If the Commission allows the property owner or lienholder more than 90 days to complete required work, the Commission shall require the property owner or lien holder to submit regular progress reports to demonstrate compliance with time schedules established by the Commission. The Commission may require the property owner or lienholder to appear before the Commission's designee to demonstrate compliance with time schedules established by the Commission.

#### 503. Standard Provisions for All Orders

##### A. Permit requirements

##### B. Liens and recovering expenses.

##### C. Inspections to verify compliance.

#### 504. Requirements for Reports or Updates to the Commission

### **VI. RETURNING CASES**

#### 601. Standard to Return a Case to Modify a Commission Order – Requested by Property Owner or Property Representative

#### 602. Standard to Return a Case to Modify a Commission Order – Requested by the Code Official

#### 603. Standard to Return a Case to Modify a Commission Order – Requested by the Commission

#### 604. Standard to Return a Case to Modify a Civil Penalty

### **VII. CONDUCT OF COMMISSION MEMBERS**

#### ~~604~~701. Compulsory Disqualified from Voting

A. A member shall disqualify himself or herself from voting whenever he or she has a personal or monetary interest in the property that is the subject of hearing, or will be directly

**Commented [AM12]:** TL: Objective: If established in the rules, the coordinator will not need to read these standard provisions into the record for each case.  
This list may need to be expanded (these are the ones that came to mind first).

**Commented [AM13]:** TL: Objective: Establish the Commission's expectation for update or report cases.  
Reminder – Reports can be made in writing to the coordinator, who can provide the reports to the Commission.

**Commented [AM14]:** TL: Objective: Establish a standard that staff can follow when they receive a request to return to the Commission from a property owner or property rep.

**Commented [AM15]:** TL: Objective: Establish any specific criteria the Commission wants ACD to consider when returning a case to the Commission

**Commented [AM16]:** TL: If you establish standards, it must be consistent with the by-laws

**Commented [AM17]:** TL: This can be covered in Rule 601; however, if you think you need a different approach to civil penalty issues, then you may want a separate rule.

affected by the decision of the Commission, or is otherwise disqualified by state law or city ordinance.

B. Members shall not investigate any case scheduled for a hearing before the Commission, except for a routine visit to view the site without comment or discussion by any person. A member shall be disqualified from voting in any case in which he or she violates this rule or intentionally receives material information regarding the case prior to the scheduled hearing.

#### ~~602~~702. Elective Disqualified from Voting

A. Any member may disqualify himself or herself from voting when any party to a hearing has sought to influence the vote of that member, other than through evidence, testimony or argument presented at the hearing.

B. A member who inadvertently receives information regarding a case prior to the scheduled hearing may participate in the consideration of the case, provided that he or she publicly discloses such information and its source prior to the start of the hearing.

#### ~~603~~703. Recommendation for Removal

The Commission may recommend to the City Council removal of any its members for cause, including repeated failure or refusal to comply with these rules or other applicable law.

### **VIII. RULE ADOPTION AND AMENDMENT**

#### ~~704~~801. Adoption

These rules may be initially adopted by the Commission at any meeting, upon the affirmative vote of ~~four~~six or more members, and shall be effective immediately upon adoption.

#### ~~702~~802. Amendment Procedure

Amendments to these Rules and Regulations may be made by the Commission at any meeting, upon the affirmative vote of ~~four~~s members, provided that any such amendments has been proposed at a previous meeting and appears in the minutes of such meeting. By unanimous consent of the Commission's members, amendments properly on the Commission's agenda may be adopted at the meeting at which they are introduced, but no such amendment shall become effective until the Commission's next meeting.

### **VIIIX. REPEAL OF PREVIOUSLY ADOPTED RULES**

#### ~~804~~901. Repeal

All previously adopted rules and regulations of the Commission shall be and the same are hereby expressly repealed.

